IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 86.

HOWARD R. HUGHES, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

On Appeal From Final Judgment of the United States District Court for the Southern District of New York.

BRIEF OF APPELLANT.

T. A. SLACK,
7000 Romaine Street,
Hollywood 38, California,
Attorney for Appellant,
Howard R. Hughes.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

SUBJECT INDEX.

TABLE OF AUTHORITIES CITED.

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OPINIONS BELOW.

The judgment appealed from was entered by the Three Judge Court below without opinion.

JURISDICTION.

The suit is in equity, brought in the District Court of the United States for the Southern District of New York by the United States under the Sherman Anti-Trust Act (R.

87). The final judgment (called an "Order") of the Three Judge District Court appealed from was entered on March 24, 1951 (R. 211).

Jurisdiction of the Supreme Court to review such decree by direct appeal is conferred by Title 15 United States Code Section 29 and by Title 28 United States Code Section 1253.

The "Order" appealed from is in fact a "final judgment" from which a direct appeal lies to this Court. *Radio Station WOW, Inc.* v. *Johnson*, 326 U. S. 120; 89 L. Ed. 2092.

QUESTION PRESENTED.

Howard R. Hughes, not theretofore a party to a civil anti-trust suit against a corporate defendant, voluntarily entered his consent to a decree which required him either to sell or to deposit in a voting trust until he should sell certain capital stock of a corporation to be acquired by him as a result of a reorganization. The consent decree specifically provided that the voting trust should "*remain in force*[1] until *Howard R. Hughes* shall have sold his holdings * * *". After enumerating certain other specific characteristics of the trust and having so specified its duration, the consent decree then provided that the trust should be upon "such *other* terms or conditions, * * * as shall be prescribed by the Court".

The question presented is whether the District Court, upon simple motion of the Government, without hearing competent evidence of any kind and in the absence of any previous findings of facts relating to the right of Howard R. Hughes to continue to own such stock, may order the Court's trustee to dispose of it, contrary to the terms of the consent decree.

STATUTES INVOLVED.

This appeal involves the construction of no statute.

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[1] All emphasis in this brief has been supplied by us.

STATEMENT.

This appeal (from an order requiring the sale of corporate stock) arises from the following material facts:

The Government had brought a civil suit against several motion picture corporations for the purpose of bringing to an end certain practices and situations alleged to be in violation of the Sherman Act (R. 2). Among many other items of relief, the Government sought in certain of the cases a decree which would require divorcement of the producing end from the distributing end of the motion picture business (R. 61). After a trial of the cases in the District Court, an appeal to the Supreme Court, and a remand to the District Court (R. 169), the Government had failed to achieve this objective and obviously had no way of knowing whether or not, or to what extent, if any, such objective might thereafter be achieved.

It was at this stage of the proceedings that the corporate defendant, RKO, and the Government had negotiations which resulted in a severance and settlement of the RKO suit by the consent decree which is the subject matter of this appeal (R. 170).

Among many items of relief and concession to both sides, the consent decree provided for the splitting up of RKO into two new corporations and the distribution of the stock of each to the stockholders of RKO (R. 171). One new corporation (called "New Picture Company") would hold the producing business and the other (called "New Theatre Company") the exhibiting business.

While such splitting up, without further relief, accomplished a technical divorcement of the two ends of the moving picture business, the possibility that appellant Howard Hughes, through ownership of approximately 24% of the stock of each company, might continue to control both corporations caused the Government to seek certain voluntary agreements from him which were set forth in Paragraph V of the decree (R. 185).

Neither appellant nor any other stockholder of any defendant corporation was a party to the suit and obviously, therefore, it would have been impossible for the Government to secure any affirmative relief against appellant except by his agreement.

Notwithstanding this fact, appellant, as a contribution to the settlement of the suit against RKO, entered his voluntary consent to Paragraph V of the consent decree (R. 188). He thereby agreed that he would *either* dispose of his holdings in one or the other of the two new corporations which were to be formed *or* that he would deposit his holdings in one or the other in a voting trust with a trustee appointed by the Court and that *such voting trust should remain in effect until he, Howard Hughes,* should dispose of his stock in one or the other of the new companies and that such voting trust should terminate upon such disposal *by Hughes.*

Having specified the nature of the voting trust, its duration, and that it should not terminate until the sale of one or the other of the holdings *by Hughes,* it was then provided that the trust should be upon such *other* terms and conditions (R. 186) as the District Court might provide.

On December 28, 1950, the District Court entered its order appointing Irving Trust Company of New York as trustee under the voting trust provided for in the consent decree and, there being no provision in this order contrary to the terms of the consent decree, appellant duly surrendered to such trustee 929,020 shares of capital stock of the New Theatre Company (R. 199, 200). Thereupon, the Assistant Attorney General filed the motion requesting the District Court "to amend the order appointing the trustee" by entering an order requiring the trustee to sell the Hughes stock unless Hughes himself should sell it within a specified length of time (R. 200).

Attached to the Government's motion was an affidavit of its Assistant Attorney General which, since there was no offer of evidence, must be taken as the supposed foundation

for the request and the Court's action (R. 201). Except for such affidavit the record is completely devoid of even a pretended excuse for the Court's action.

The ex parte affidavit was not offered as evidence and obviously would have been inadmissible if offered. Were it otherwise, it would be sufficient to say of it that it set forth no fact not either affirmatively contemplated in the consent decree or thereafter expressly approved by the District Court except that in the "considered opinion" of the affiant the Court should enter the order prayed for in order to accomplish the desired result (R. 202).

By his original and supplemental replies to the Government's motion, appellant objected to a determination of his rights in this summary proceeding and pointed out that the true nature of the proceeding was to alter or amend the terms of the consent decree to the prejudice of appellant without alleging or offering to prove any facts which would constitute legal justification therefor (R. 203, 209).

The Government's motion was granted by the Court notwithstanding the complete absence of evidence or any offer thereof and on March 24, 1951, the Court's order was entered (R. 211) requiring the Court's trustee of the Hughes' stock to dispose of it unless Hughes should have disposed of it by February 20, 1953. There was neither allegation nor proof of any change in the conditions or circumstances which existed at the time of the entry of the consent decree nor of any other fact purporting to be a foundation for depriving appellant of his property. The Government's affidavit attached to the motion merely set forth former proceedings in the case (by others than appellant) and that in the "considered opinion" of the Assistant Attorney General the order should be granted.

SPECIFICATION OF ERROR.

The Court erred in entering its order of March 24, 1951, requiring its trustee, Irving Trust Company, to dispose of appellant's stock unless appellant should dispose of it by a certain date because:

(a) There is no evidence or adjudication that appellant's ownership of the stock is in violation of or contrary to law;

(b) The consent decree, to which appellant voluntarily subscribed, neither requires sale of the stock by appellant nor authorizes the Court to force a sale upon him;

(c) There has been no allegation and proof or even evidence or any fact sufficient in law to sustain an amendment of the consent decree in this respect or to sustain the entry of an order in direct conflict with its clear intent and purpose.

SUMMARY OF ARGUMENT.

The property rights of a party, guaranteed by a consent decree to which he voluntarily subscribed, may not be summarily altered to his prejudice without his consent except upon a showing in a proper proceeding and upon competent evidence that there is some legally sufficient foundation for such alteration.

ARGUMENT.

It has never been judicially determined that the ownership by appellant of a 24% stock interest in each of the new corporations is in violation of law.

The consent decree expressly provided that neither its entry nor any statement, provision, or requirement contained in it should be construed as an admission or adjudication or evidence that the allegations of the complaint or any of them were true (R. 171, 172).

Prior to appellant's voluntary subscription to the consent decree the Government had brought no suit against him or his predecessor in title and had taken no measures looking toward a forced sale.

Obviously, therefore, to determine the rights of the parties with respect to the stock involved we must look to the

terms of the consent decree and to the law which governs its construction, force, and effect.

For convenience, Paragraph V of the consent decree is here set forth with emphasis upon certain words and phrases:

"Howard R. Hughes represents that he now owns approximately 24 percent of the common stock of Radio-Keith-Orpheum Corporation. Within a period of eighteen months from the date hereof, Howard R. Hughes shall *either:*

A. Dispose of his holdings of the stock of (1) the New Picture Company, or (2) the New Theatre Company, as he may elect, to a purchaser or purchasers who is or are not a defendant herein or owned or controlled by or affiliated with a defendant in this cause; *or*

B. Deposit with a trustee designated by the court all of his shares of the New Picture Company or the New Theatre Company, as he may elect, *under a voting trust agreement* whereby the trustee shall possess and be entitled to exercise all the voting rights of such shares, including the right to execute proxies and consents with respect thereto. *Such voting trust agreement shall thereafter remain in force until Howard R. Hughes shall have sold his holdings of stock of the New Picture Company or the New Theatre Company* to a purchaser or purchasers who is or are not a defendant herein or owned or controlled by or affiliated with a defendant herein, and *upon such sale and transfer such voting trust agreement shall automatically terminate.* Such trust shall be upon such *other* terms or conditions, including compensation to the trustee, as shall be prescribed by the Court. During the period of such voting trust, Howard R. Hughes shall be entitled to receive all dividends and other distributions made on account of the trusteed shares, and proceeds from the sale thereof.

For the purpose of evidencing his consent to be bound by the terms of section V of this decree, Howard R. Hughes individually has consented to its entry and it shall be binding upon his agents and employees."

We do not contend that the Government would be powerless to obtain a modification of the consent decree in a proper proceeding and upon proper showing of change in the facts and circumstances upon which the consent decree was based. We do insist, however, that in the absence of some such showing the consent decree will stand as a meaningful thing and it may not be ignored without cause in favor of either party. We submit also that it must be construed reasonably and by recognized principles governing the construction of legal documents.

The possibility was clearly contemplated by the parties and set forth in the consent decree that appellant would not dispose of his holdings in either of the new companies to be formed. Thus, Paragraph V of the consent decree reads in part "Howard R. Hughes shall *either:* (A) Dispose of his holdings of the stock of (1) the New Picture Company, or (2) the New Theatre Company, * * *; *or* (B) Deposit with a trustee designated by the court all of his shares of the New Picture Company or the New Theatre Company, as he may elect * * * ".

Appellant agreed if he did not sell his holdings in one or the other of the new companies he would be bound to certain carefully specified obligations, namely to " * * * deposit with a trustee * * * all of his shares of the New Picture Company or the New Theatre Company * * * under a *voting trust* agreement whereby the trustee shall *possess and be entitled to exercise* all the *voting rights* of such shares, including the *right to execute proxies and consents* with respect thereto. Such voting trust agreement shall thereafter *remain in force* until *Howard R. Hughes shall have sold his holdings* * * * of the New Picture Company or the New Theatre Company * * * and *upon such sale* * * * such voting trust agreement *shall automatically terminate*".

Having set forth clearly the basic purposes, duration, and characteristics of the trust, Paragraph V then provides: "Such trust shall be upon such *other* terms or conditions, including compensation to the trustee, as shall be

prescribed by the Court". This provision was for the obvious purpose of providing the necessary power to implement the trust *within the framework of its expressed provisions, purposes, and limitations.*

That there might be no doubt as to the limitations on the trustee's powers with respect to the stock or the proceeds of any sale *by Hughes*, it was then provided: "During the period of such voting trust, Howard R. Hughes shall be entitled to receive all dividends * * * on account of the trusteed shares, and proceeds from the sale thereof".

The Government has argued in effect that the consent decree should be construed as if it had provided that the trust should be upon such "other *or different* terms" as the Court might prescribe. Such construction does violence to the plain language of the decree as well as the elementary principles of construction of writings. The principle applicable here is illustrated from the opinion in *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204 at 208; 76 L. Ed. 704:

> "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * * Specific terms prevail over the general in the same or another statute which otherwise might be controlling. * * * The construction contended for would violate the cardinal rule that, if possible, effect shall be given to every clause and part of a statute. * * * *"*

The Government's contention, contrary to the elementary rules just stated, is that the general provisions of Paragraph V empower the Court to ignore its specific provisions.

The District Court has effectively altered the terms of the consent decree upon mere motion of the Government and without any basis recognized as sufficient in law for this purpose such as fraud or deception upon the Court or a change in the circumstances and conditions not contemplated by the parties or the Court at the time of the entry of the decree.

It is well settled by the decisions of this and other federal courts that a consent decree, like any other decree, is fully and finally determinative of the rights of the parties thereto unless it is set aside for fraud or unless there is a showing, by proper evidence and in a proper proceeding, or changed facts and conditions which would cause it to be equitable to modify the decree.

The Government has argued in effect that because the District Court reserved jurisdiction over this consent decree the Court may alter or amend it at will, unfettered by necessity for any legal process to insure that the rights of a party shall not be unlawfully invaded. Such is not the law. On the contrary, reserved jurisdiction over any decree can do no more than to keep the case open for the entry of any future orders or amendments *upon proper showing.*

We quote from *United States* v. *Radio Corporation of America*, 46 F. Supp. 654, at 655 and 656, D. C. Del. (1942), because it is such a clear expression of the law in its particular application to this appeal:

> "The Government has moved to vacate the consent decrees which were heretofore entered in this suit pursuant to formal written stipulations of the parties. *The motion is based upon the sole ground that in the opinion of the Department of Justice the decrees do not now promote the public interest.* The motion is vigorously opposed by the defendants. It presents the question whether a consent decree may be vacated solely upon the ground stated and *without proof of any change in circumstances since its entry.* A subsidiary question is whether the decrees conferred benefits upon the defendants. If they did, the Government concedes that its motion must be denied. After full consideration I have reached the conclusion that the first question must be answered in the negative and the second in the affirmative. I shall state briefly my reasons for reaching these conclusions. • • •
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> "I think it is clear, as Justice Frankfurter suggested in his dissenting opinion in *Chrysler Corporation* v. *United States*, 316 U. S. 556, 62 S. Ct. 1146, 86 L. Ed.

1668, that the modification or vacation of a consent decree previously entered involves the same duty of the court independently to determine that the action is equitable and in the public interest. Accordingly, I cannot accede to the contention of the Government that the sole basis of the consent decree was the Attorney General's representation to the court that it would provide suitable relief concerning the matters charged in the petition, and that consequently his present representation that it no longer serves the public interest requires the court, in the absence of some benefit to the defendants, to vacate the decree without evidence or agreement.

"Furthermore I am satisfied that the defendants derived substantial benefit from the consent decrees. It has been held that such a decree in an anti-trust case binds the Government as well as the defendants (*United States* v. *International Harvester Co.*, 274 U. S. 693, 703, 47 S. Ct. 748, 71 L. Ed. 1302), even though it later appears that it was inadequate when entered, for the agreement upon which it is based is within the power of the Attorney General to make and his authority to determine what relief will satisfy the requirements of the law 'includes the power to make erroneous decisions as well as correct ones.' *Swift & Co.* v. *United States*, 276 U. S. 311, 331, 332. * * * In the present case the Attorney General determined that certain relief short of that prayed for would satisfy the public interest and he agreed to the entry of decrees terminating the suit by granting that relief. Since these consent decrees are based upon an agreement made by the Attorney General which is binding upon the Government the defendants are entitled to set them up as a bar to any attempt by the Government to relitigate the issues raised in the suit or to seek relief with respect thereto additional to that given by the consent decrees. * * * This is a very real benefit of which they would be deprived were the Government's motion to be granted.

"I do not overlook the fact that consent decrees may be set aside for lack of actual consent to the decrees as entered, for fraud in their procurement, or for lack of federal jurisdiction. * * * No such ground for vacating them is asserted here, however. Likewise I fully recog-

nize the power of this court to modify the decrees upon a showing of a change in circumstances since their entry requiring such modification. * * * It would seem, however, that such modification must be consistent with the purpose of the original decrees and calculated to effectuate and not thwart their basic purpose. * * * "

It is clear from the authorities that the term "purpose of the original *decree*" should not be confused with the opposing purposes of the *parties* to it. On the contrary, the purpose of the *decree* always is to *settle the rights of the parties in a specified manner.*

The leading authority from the Supreme Court is *United States* v. *Swift & Co.*, 286 U. S. 106, 114, 119, opinion by Mr. Justice Cardozo. After extensive litigation the consent decree was entered specifically prohibiting the defendant Swift & Co. from carrying on certain practices. The decree contained the broadest provision for continuing jurisdiction, namely, "and for the purpose of entertaining at any time any application which the parties may make." Swift & Co. filed its bill for modification of the decree alleging *changes of conditions* and that the provisions of the original decree were no longer equitable. Extensive evidence was introduced in the trial court in support of the allegations. The Court first disposed of the question of its *power* to modify the decree as follows, at page 114:

> "*We are not doubtful of the power of a court of equity to modify an injunction* in adaptation to *changed conditions* though it was entered by consent. * * * *Power to modify the decree was reserved by its very terms,* and so from the beginning went hand in hand with its restraints. *If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery.* A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. * * * The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing con-

duct or conditions and are thus provisional and tentative. * * * The result is all one whether the decree has been entered after litigation or by consent. * * * In either event, a court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned *through changing circumstances* into an instrument of wrong."

The Court then turned to the question of *what is required to be shown* by the moving party before a court *will* modify a consent decree. In reversing the judgment of the lower court the Supreme Court said there had *not been sufficient showing* to justify the modification. The following is from the opinion at page 119:

"There is need to keep in mind steadily the limits of inquiry proper to the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in *changing a decree*. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. *We are not at liberty to reverse under the guise of readjusting.* Life is never static, and the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the *changes* are so important that dangers, once substantial, have become attenuated to a shadow. No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.

"* * * Wisely or unwisely, they submitted to these restraints upon the exercise of powers that would normally be theirs. They chose to renounce what they might otherwise have claimed, and the decree of a court confirmed the renunciation and placed it beyond recall."

An earlier Supreme Court case was *United States* v. *International Harvester Company*, 274 U. S. 693, 702, 703, opinion by Mr. Justice Sanford. This was an appeal from a decree of a three judge court which dismissed a *supplemental petition* of the United States seeking to modify an earlier consent decree in an anti-trust suit. The decree sought to be amended contained an expressed reservation of jurisdiction that "the United States shall have the right to such further relief herein as shall be necessary to restore said competitive conditions and to bring about a situation in harmony with law; * * *."

The decree sought to be amended had required the sale by International Harvester of certain of its operating properties and this had been done. The Government alleged that the purpose of its supplemental petition was "to restore competitive conditions in interstate business in harvesting machines and other agricultural implements, and bring about a situation of harmony with law." Specifically it alleged that the properties which defendant had been required to sell under the original decree had constituted such a negligible part of its output that the original decree was inadequate to accomplish its declared purpose. Further relief was sought to require defendant to divide into three separate concerns. The Government's petition was answered and an examiner was appointed and evidence taken to determine the facts.

It was the Government's contention that the declared purpose of the decree sought to be amended was to restore competitive conditions in the harvesting machine industry as they had existed in 1902 and that the sole test to be applied in determining whether the decree had accomplished its purpose was whether the competitive conditions had in fact been restored.

The consent decree sought to be amended resulted from an agreed settlement pending an appeal from a decree which *required a split-up of the company*. The consent decree's terms included specific requirements and limita-

tions upon the method of doing business but *omitted the requirement of split-up.*

In denying the relief sought by the Government, the Court clearly recognized that the *purpose* of a consent decree is to settle the rights of the litigants *in a specified manner* and to put at rest the issues. We quote from the opinion at pages 702-3:

> "The basic contention of the Government here is that the declared purpose of the decree of 1918 was to restore competitive conditions in the harvesting machine industry substantially as they had existed in 1902 before the International Company was formed by the combination of the five original companies, that is, to so increase the amount of competition and the number of competitors as to restore, in a 'quantitative' sense, 'the free and open competition which existed when the combination was formed'; and that therefore the sole test to be applied in determining whether the decree has accomplished its purpose is whether it 'has had the effect actually to restore in the harvesting machine industry the competitive conditions which obtained prior to 1902.' *We cannot sustain this contention. This is entirely inconsistent with the purpose of the consent decree,* both as appears from its terms and as it was apparently construed by the District Court itself. *Its plain and evident purpose was to substitute for the requirement in the previous decrees that the International Company be divided into separate and distinct corporations, the requirements that, in order to establish 'competitive conditions' bringing about 'a situation in harmony with law,' the International Company should limit its sales agency in any town or city to a single representative, and should sell three of its harvesting machine lines to independent manufacturers* of agricultural implements; and to give the United States the right to further relief only 'in the event' that within eighteen months after the termination of the war such competitive conditions had not been established. *And a construction of this decree by which, although its requirements have been fully complied with and lawful competitive conditions established, the United States would nevertheless be entitled to further*

relief by the division of the International Company into separate and distinct corporations for the purpose of restoring the actual competitive conditions that had existed sixteen years before the entry of the consent decree, would plainly be repugnant to the agreement approved by the court and embodied in the decree, which has become binding upon all parties, and upon which the International Company has, in the exercise of good faith, been entitled to rely."

A careful analysis of the *Harvester* case discloses a close similarity to this case in the following respects:

1. The relief sought by the Government was to add a remedy not mentioned in the decree in each case.

2. The Government in each case failed to show any change of conditions and indeed failed to set up a change of conditions as the basis for the relief sought.

3. In each case the Government seemed to mistake the purpose of a consent decree to be to create a state of *unsettled* rights of the parties which the Government might change at will and without cause, rather than to *settle* the rights of the parties in a specified manner.

In oral argument of this case the Government's attorney referred to *Chrysler Corporation* v. *United States*, 316 U. S. 556. That case should never be considered except in connection with the companion case of *Ford Motor Company* v. *United States*, 335 U. S. 303, which, in respect to the matter here under consideration, was identical in its facts, except that the action occurred at a later date. In the *Chrysler* case, Mr. Justice Byrnes wrote the majority opinion which consumed somewhat less than two pages in the Reporter and which made no reference to authority except the *Swift* case. Mr. Justice Frankfurter wrote a vigorous dissent which was admirably summed up in the following sentences, at pages 570 and 571:

"* * * Regard for the proper administration of justice, which makes determinations depend upon proof and *not upon unsupported assertions of one of the liti-*

gants, is a vital aspect of the public interest. *The burden obviously rests upon the Government to show good cause for disregarding an expressed provision in a carefully framed decree*, and extending to twice its original duration the period of restraint against Chrysler. So to enlarge the burden of the decree without any such showing by the Government is a one-sided restriction of Chrysler's freedom of action, at least of its right to prove that the restricted action is innocent. Instead of exacting such proof from the Government, the District Court cast upon Chrysler the duty of showing that it would not be prejudiced if the fetters remained after the period fixed by the decree. He who seeks relief from equity has the burden of showing that he is entitled to it. * * *."

In the later case of *Ford Motor Company* v. *United States* almost identical facts growing out of the identical situation were involved, but in that case Mr. Justice Frankfurter wrote the majority opinion and held directly in accord with his dissent in the *Chrysler* case. A careful study of the two decisions could but lead to the conclusion that though the *Chrysler* case is not overruled, it will not be extended beyond the particular results there reached.

The *Chrysler* case permitted nothing more than the extension of time during which an *agreed and expressly stated prohibition* should be continued in order to accomplish the *expressly stated pattern* of the consent decree, namely, that Chrysler and General Motors should be subjected to identical prohibitions. It was an extension of time, not an added remedy as is sought here.

Confidence in the integrity of a consent decree is an important factor in the settlement of many complicated suits. Adherence to proper procedure is as essential to the administration of justice as is the fundamental law.

CONCLUSION.

We respectfully submit that the judgment or order appealed from should be set aside and held for naught and that the case should be remanded to the District Court for the Government's motion there to be dismissed or denied unless it be amended to allege facts sufficient in law to authorize an amendment of the consent decree in the respect prayed for by the Government and unless proof of such facts be duly made by competent evidence and appellant prays for such other relief as to this Court may seem proper.

Respectfully submitted,

T. A. SLACK,
Attorney for Appellant,
Howard R. Hughes.

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Acknowledgment of Service.

Due service according to the rules of the Supreme Court of five copies of the within Brief of Appellant is hereby acknowledged.

Dated this 17th day of December, 1951.

Attorney for Appellee.